(1)

Supreme Court, U.S.
FILED

03 156 JUL 22 2003

No.

In the
Supreme Court of the United States

Edward Lachman
Petitioner

v.

Bill Wietmarschen
C. Eric Crowe
Respondents

On Petition for Writ of Certiorari
to the Ohio Municipal Court of Hamilton County

PETITION FOR WRIT OF CERTIORARI

Edward Lachman
Petitioner in search of Counsel
87 Juergens Ave.
Cincinnati, Ohio 45220
513-861-7746

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33 pp

QUESTIONS PRESENTED FOR REVIEW

May a person who had been improperly joined to a federal case over which a district court has no personam jurisdiction, be later presumed by a state court to have been a properly joined federal party?

May a federal case over which the district court had no personam jurisdiction with regard to improperly joined parties, be later presumed by a state court to have been fully litigated by them for the purpose of deciding res judicata?

May a barred person in a federal case for federal statutory claims, who had been barred from joining on grounds of exceeding the statue of limitations, be later barred on grounds of res judicata in a state court after timely filing a common law trespass claim arising out of the same events?

When deciding res judicata, may a state court impute subject matter jurisdiction to a federal court where it would not have had any such jurisdiction?

May a litigant in propria persona be denied equal protection of federal law when a state court fails to resolve federal issues raised in a timely manner, either by failing to certify those issues with a federal court, or failing to conduct other required procedures sua sponte on its own initiative rather than upon motion?

CITATIONS OF (UN)OFFICIAL REPORTS OF OPINIONS & ORDERS ENTERED IN THIS CASE

Municipal Court of Hamilton County
(case No 01cv29469)
Order of Reference to Magistrate: 2001.12.19
Magistrate's Decision: 2002.2.8
Entry Approving the Decision of the Magistrate: 2002.2.27
Judgment Entry: 2002.2.28
Decision Denying Motion to Strike: 2002.4.1

First District Court of Appeals of Ohio
(case No c020208)
Judgment Entry: 2002.12.6
Decision Overruling Application for Reconsideration: 2003.1.10

Supreme Court of Ohio
(case No 03-0127)
Entry: 2003.4.23

BASIS FOR JURISDICTION

Review of the Magistrate's Decision entered on 8 February 2002 is sought in regard to the federal issues. It was affirmed by every successive level of the judicial system of the State of Ohio. Each level avoided addressing the federal issues that were raised in various manners. Jurisdiction to review the Magistrate's Decision on a writ of certiorari is conferred on this Court by 28 U.S.C. §1257.a, firstly for having drawn into question the validity of 28 U.S.C. §1359.

Review is further sought over the issue of whether a federal court could have jurisdiction for a common law tort of trespass where there is no diversity of jurisdiction, the property is private and is not on federal territory. The Municipal Court's ruling that res judicata could apply where there was a lack of subject matter

jurisdiction (in addition to the lack of personam jurisdiction) in a federal court, would presume that a federal court could have had judicial power over matters that are reserved to the States, and so draw into question the validity of the 10th Amendment.

Review is also sought for failure of the Municipal Court to grant Petitioner his right to equal protection by certifying the federal issues with the federal district court that had barred the Petitioner from joinder, or by any other procedure it should have performed sua sponte, where such failure could thereby draw into question the validity of the 14th Amendment.

CONSTITUTIONAL PROVISIONS & FEDERAL STATUTES INVOLVED

The 10th Amendment.
The 14th Amendment.
28 U.S.C. §1359
28 U.S.C. §1257(a)

STATEMENT OF THE CASE

This case arose from Petitioner's complaint in the Ohio Municipal Court of Hamilton County for common law trespass on his property by Respondents Wietmarschen and Crowe, who forcibly entered his home, and did not identify themselves to the Petitioner, in violation of the knock and announce rule, and searched his home for his son without a search warrant on 14 November 1997. It was alleged that the Respondents tortured his son (apparently on the grounds that he was an Islamic terrorist and should be handled accordingly as prescribed to them by federal guidelines and training), and that such mistreatment of his son annulled any other authority that the Respondents had to be on the petitioner's property, and thereby were trespassing.

In November 2001, the Petitioner sued the Respondents in Hamilton County Municipal Court, for

common-law trespass, on the theory that they had committed an aggravated trespass which annulled any authority they had to be on his property. Municipal Judge Mattingly assigned the case upon "Defendants' Motion for Summary Judgment" to Magistrate Wolf for a report on all related issues of law and fact, as required by Ohio Civil Rule 53.E.1.

In Part 6 of Plaintiff's Motion to Strike Defendants' motion, Petitioner raised at least one of facts of a prior federal complaint in connection with the federal issues sought for review: "neither of the current Defendants is named, nor is the current Plaintiff named as a party to the original complaint, nor were any of these names added prior to 14 November 1999, when the statute of limitations expired." At the same time Petitioner submitted an Affidavit that stated in Item 9: "I did not join any complaint to a federal civil rights action before the expiration of the associated 2-year statute of limitations on 14 Nov. 1999, nor did I name any of the current Defendants before that time".

Magistrate Wolf then held a hearing and failed to report on all related issues of law as required by Ohio Civil Rule 53.E.1, and as ordered in Judge Mattingly's Order of Reference. The subsequent Magistrate's Decision reached conclusions of federal law such that the Petitioner may be presumed to have been a properly joined "party to the action in Federal Court," or that "The complaint in this action has already been litigated in United States District Court", such that said federal court may be presumed to have had jurisdiction over the Parties, as well as the same subject matter of trespass.

Magistrate Wolf instead relied on the unsworn testimony of the Respondents' counsel that the Petitioner had been properly joined to the federal case, and that the District court would have had jurisdiction over Petitioner's state common-law trespass cause of action. As attached to Defendants' Motion for Summary Judgment, the District court's order states that the

Petitioner had not been properly joined, nor was there ever any claim of federal jurisdiction over the state common law tort of trespass on private property. Magistrate Wolf failed to certify any such issues of federal law or fact with the federal court, which was required of her, since she lacked jurisdiction to issue conclusions of federal law, and there were no precedents in case law which were controlling on the Petitioner's unique situation.

Furthermore, Magistrate Wolf failed to conduct, as provided for by Ohio Civil Rule 16 (2) & (4), "all procedures necessary" for any "simplification of the issues" and for any "necessity of amendments to the pleadings" which could remove defects as alleged by the Respondents to be in Petitioner's Complaint, and so allow a subset of issues alleged in the Complaint to proceed to trial. Magistrate Wolf also failed to consider and report on Affidavits filed by the Petitioner, which showed that the Petitioner was not properly joined to the federal suit, and also showed that there were genuine issues of fact material to a common law tort cause of action for trespass, in order to preclude summary judgement.

The rubber-stamping is most evident by the fact that Judge Mattingly issued an Order to Approve the Magistrate's Decision to recommend that summary judgement be granted to the Respondents before issuing a decision on Plaintiff's "Motion to Strike" or on Plaintiff's "Verified Objection to Magistrate's Decision" which cited the federal issues as their grounds.

As a result of the foregoing derelictions of duty with regard to due process, the Petitioner was denied equal protection with regard to all issues of law. The Court of Appeals failed to remedy these omissions in its initial judgment entry, and failed to cite any federal case law in support of its decision. The Petitioner then submitted an Application for Reconsideration which explicitly addressed at least one of the federal issues of law sought

for review, and not just implicitly via reference in the Appellant's Brief to Petitioner's Motions and Objections in the Record of the Municipal Court. The Court of Appeals then issued a Decision Overruling an Application for Reconsideration. The Petitioner then filed an appeal to the Ohio Supreme Court, and explicitly addressed at least one of the federal issues of law sought for review in his Memorandum In Support of Jurisdiction. The Ohio Supreme Court issued an Entry that declined to hear Petitioner's case for lack of jurisdiction and dismissed the case.

ARGUMENT FOR ALLOWANCE OF THE WRIT OF CERTIORARI

In this case, the Ohio Municipal Court of Hamilton County decided issues of federal law that has not been, but should be settled by this Court. On the one hand, the Municipal Court imputed powers of jurisdiction to the federal courts that rightly belong to state courts. On the other hand, the Petitioner was denied Equal Protection of the Laws, by not having issues of federal law certified with the relevant federal district court, when such procedure was implicitly required by the Ohio Civil Rules of Procedure, and specified by the Municipal Court Judge in an Order of Reference to the Magistrate. The legislative history of 28 U.S.C. 1359 shows that Congress intended to protect the people from the consequences of improper joinder. As a result of the decision of the District Court, the Respondents had been granted such protection with regard to the earlier federal case, while as a result of the decisions in this case in the Ohio courts, the Petitioner has been denied the same protection.

APPENDIX
(provisional: to be superseded by Joint Appendix)

HAMILTON COUNTY MUNICIPAL COURT
HAMILTON COUNTY, OHIO

EDWARD LACHMAN
Plaintiff
vs.
BILL WIETMARSCHEN
ET AL.
Defendants

CASE NO. 01CV29469
JUDGE ELIZABETH MATTINGLY

ORDER OF REFERENCE TO MAGISTRATE

It appearing to the Court that no jury demand has been filed herein and that the amount in controversy is less than $5,000, it is hereby ordered that, pursuant to Civil Rule 53, this action be and it is hereby referred to the Court Administrator for assignment to one of the duly appointed magistrates of this Court for trial and report to the Court on all issues of law and fact in the within action.

The Administrator shall assign this action for setting before a magistrate on the first available date for hearing and report within 90 days of assignment.

s/_____
JUDGE ELIZABETH MATTINGLY
Date: December 19, 2001

Copies mailed to:

Edward Lachman
87 Juergens Ave.
Cincinnati, Ohio 45220

David T. Stevenson, Esq.
230 E. Ninth Street, Suite 4000
Cincinnati, Ohio 45202-2151
--

HAMILTON COUNTY MUNICIPAL COURT
HAMILTON COUNTY, OHIO

EDWARD LACHMAN
Plaintiff
vs.
BILL WIETMARSCHEN
C. ERIC CROWE
Defendant.

CASE NO. 01CV29469

MAGISTRATE'S DECISION

This cause came to be heard on the defendant's Motion for Summary Judgment on the 8th day of January, 2002, in the Civil Division of the Hamilton County Municipal Court. Both parties were present and presented arguments on the Motion.

The complaint in this action has already been litigated in the United States District Court. This is clearly set forth in the defendant's Motion for Summary Judgment and copies of the prior complaint and decision by Magistrate Hogan are attached. In this hearing the plaintiff argued that he was not a party of the action in Federal Court, however a copy of the prior complaint demonstrated that Edward Lachman was a party in the prior case. Therefore, Edward Lachman is barred from attempting to relitigate his claim in this Court.

I therefore recommend defendant's Motion for Summary Judgment is granted.

Copies of this decision have been mailed to the parties or their counsel. Unless written objections to this decision are filed and served within 14 days of the date of its filing, the decision may become the order of the Court.

s/_____
Ellen T. Wolf, Magistrate
Hamiton County Municipal Court
February 5, 2002

Order:
Notice Mailed
to Parties
On: 2.8.02
Int M
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HAMILTON COUNTY MUNICIPAL COURT
HAMILTON COUNTY, OHIO

Entered
FEB 28 2002
Image 223

EDWARD LACHMAN
Plaintiff
vs.
BILL WIETMARSCHEN
C. ERIC CROWE
Defendant

CASE No. 01CV29469

ENTRY APPROVING THE DECISION OF THE MAGISTRATE

ORDERED that the Decision of the Magistrate be approved; that the findings of fact set forth therein are adopted as the finds of fact of the Court; and that the recommendations contained therein are adopted as the order of the Court.

s/___(Mattingly)___
Judge Municipal Court
2-27-02
DATE

Order:
Notice Mailed
to Parties
On: 3.1.02
Int M
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HAMILTON COUNTY MUNICIPAL COURT
HAMILTON COUNTY, OHIO

Entered
FEB 28 2002
Image 224

EDWARD LACHMAN
Plaintiff(s)
vs.
BILL WIETMARSCHEN
C. ERIC CROWE
Defendant(s)

CASE No. 01CV29469

JUDGMENT ENTRY

x The objections to the Magistrate's Decision are overruled
(Check if applicable)

x The decision of the Magistrate is adopted and judgement is hereby rendered as follows:
(Restate the recommended judgment)

Defendant's Motion for Summary Judgment is granted.

s/___(Mattingly)___
Judge Municipal Court
2-28-02
DATE

Order:
Notice Mailed
to Parties
On: 3.1.02
Int M
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HAMILTON COUNTY MUNICIPAL COURT
HAMILTON COUNTY, OHIO

Entered
APR 01 2002
Image 193

EDWARD LACHMAN
Plaintiff
vs.
BILL WIETMARSCHEN
ET AL.
Defendants

CASE NO. 01CV29469
JUDGE ELIZABETH MATTINGLY

DECISION DENYING MOTION TO STRIKE

This matter came on for decision on Plaintiff's Motion to Strike following entry of Summary Judgment in favor of Defendants on February 8, 2002. For good cause shown, Plaintiff's Motion to Strike is denied.

SO ORDERED this 29th day of March, 2002.

s/_____
JUDGE ELIZABETH MATTINGLY

Copies mailed to:

Edward Lachman
87 Juergens Ave.
Cincinnati, Ohio 45220

David T. Stevenson, Esq.
230 E. Ninth Street, Suite 4000
Cincinnati, Ohio 45202-2151

Order:
Notice Mailed
to Parties
On: 4.1.02
By: KA
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IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

EDWARD LACHMAN,
Plaintiff-Appellant,
vs.
BILL WIETMARSCHEN
and

C. ERIC CROWE,
Defendants-Appellees.

APPEAL No. C-020208
TRIAL No. 01CV-29469

DECISION

PRESENTED TO THE CLERK
OF COURTS FOR FILING
DEC 06 2002
COURT OF APPEALS

Civil Appeal From: Hamilton County Municipal Court
Judgment Appealed From Is: Affirmed
Date of Judgment Entry on Appeal: December 6, 2002

Edward Lachman, pro se,
Michael K. Allen, Hamilton County Prosecuting Attorney, Richard P. Gabelman and David T. Stevenson for Appellees.

Please note: We have removed this case from the accelerated calendar.

OHIO FIRST DISTRICT COURT OF APPEALS

PAINTER, Presiding Judge.

{¶1} Plaintiff-appellant, Edward Lachman, appeals the trial court's grant of summary judgment for defendants-appellees, Bill Wietmarschen and C. Eric Crowe. The trial court held that previous litigation by Lachman against Wietmarschen and Crowe in federal district court barred Lachman from attempting to relitigate his claim in a different court. We affirm.

{¶2} The underlying dispute in Lachman's claim involved the arrest of Lachman's son, Max, by Wietmarschen and Crowe, who are adult probation officers of the Hamilton County Court of Common Pleas. In November 1997, Common Pleas Court Judge Nadel issued an arrest warrant for Max Lachman, on account of his probation violations, and Wietmarschen and Crowe arrested Max Lachman at his father's home.

{¶3} In 2000, Lachman joined a suit against Wietmarschen and Crowe in the United States District Court for the Southern District of Ohio under federal and state law, alleging false arrest, use of excessive force causing bodily injury, and intentional infliction of emotional distress. In January 2001, the district judge dismissed the Lachmans' complaint, finding that the two-year statute of limitations had run and that the complaint was time-barred.

{¶4} In November 2001, Edward Lachman sued Wietmarschen and Crowe in Hamilton County Municipal Court, for trespass. The municipal judge assigned the case to a magistrate for trial and for a report on all issues of law and fact. The magistrate held a hearing and decided that the complaint had been previously litigated in federal district court, meaning that Lachman was barred from attempting to relitigate his claim in the municipal court. The judge adopted the magistrate's recommendations and granted Wietmarschen's and Crowe's motion for summary judgment. Lachman now raises 12 assignments of error.

{¶5} In his first assignment of error, Lachman claims that the trial court erred by allowing a hearing on the motion for summary judgment when it was not properly filed according to Civ.R. 56(B). Civ.R. 56(B) provides, "If the action has been set for pretrial of trial, a motion for summary judgment may be made only with leave of court."

{¶6} The record reflects that Wietmarschen and Crowe did not seek leave of court prior to filing their

motion for summary judgment, even though a trial date had already been set. But a court may, in its sound discretion, consider a motion for summary judgment that has been filed, without the express leave of the court, after the action has been set for trial. Furthermore, where the acceptance of a motion occurs by the grace of the court, the decision to accept is itself "by leave of court." Therefore, though Wietmarschen and Crowe did not make a format request for leave of court, the fact that the court acknowledged their motion and set a hearing date shows that retroactive leave to file was granted.

{¶7} We cannot reverse the trial court's decision to accept the motion without showing an abuse of discretion. An abuse of discretion occurs if the trial court's decision is unreasonable, arbitrary, or unconscionable. A decision is unreasonable if it is unsupported by a sound reasoning process. We conclude that the trial court's acceptance of the motion was not unreasonable. Accordingly, Lachman's first assignment of error is overruled.

{¶8} In his second through seventh assignments of error, Lachman argues that the trial court errored by not granting his motion to strike Wietmarschen and Crowe's summary judgment motion, both because it was a "sham" and because of the procedural error we have already discussed. Lachman asserts that the trial court also errored by not striking all four legal arguments made by Wietmarschen and Crowe in their motion, because the arguments were based on fraudulent premises.

{¶9} Civ.R. 12(F) provides that a court may strike any "insufficient claim or defense or any redundant, immaterial, impertinent or scandalous matter." Whether to grant or deny a motion to strike rests in the sound discretion of the trial court, and the court's decision will be disturbed on appeal only for an abuse of discretion.

{¶10} The trial court determined that, at the least, the motion and arguments for summary judgment were worth considering. Given that the trial court eventually granted the motion for summary judgment, we conclude that it was not unreasonable to consider the issues raised by the motion and to decide not to strike Wietmarschen's and Crowe's motion and arguments for the summary judgment. It was within the trial court's discretion to determine whether the motion and arguments were insufficient, redundant, or immaterial, and the trial court did not abuse its discretion. Therefore, we overrule assignments two through seven.

{¶11} In assignments eight, nine, and twelve, Lachman argues that the trial court did not properly consider all the federal issues presented by Lachman in his affidavits. In other words, Lachman argues that res judicata should not have applied, and that the grant of summary judgment was improper.

{¶12} We review the grant of summary judgment de novo. Wietmarschen and Crowe were entitled to prevail under Civ.R. 56(C) only if (1)there was no genuine issue of material fact; (2) they were entitled to judgment as a matter of law; and (3) it appeared that reasonable minds could come to but one conclusion when viewing the evidence in favor of the party opposing the motion, and that conclusion was adverse to the party opposing the motion.

{¶13} Under the definition of res judicata, a valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action. For two suits to be based on the same transaction, they must have a "common nucleus of operative facts." The doctrine applies to extinguish a claim by the plaintiff against the defendant even though the plaintiff is prepared in the second action (1) to present evidence or grounds or theories of the case not presented in the first action, or (2) to seek

remedies or forms of relief not demanded in the first action. It has long been recognized that the doctrine of res judicata applies in a proper case as between federal court and state court judgments.

{¶14} In 2000, Lachman was improperly joined to the suit in federal court filed by his son, Max, who had been arrested at Lachman's home in 1997. Lachman's suit in state court, while asserting a different cause of action, nonetheless also concerned the arrest of his son by Wietmarschen and Crowe in November 1997. Therefore, both the federal and state suits derived from the same nucleus of operative facts. And, under res judicata, any claims that could have been asserted after a proper joinder in federal court were barred.

{¶15} Lachman's federal suit was dismissed because the statute of limitations had run. The Ohio Supreme Court has held that "a judgment based upon the statute of limitations is generally regarded as on the merits and bars another action for the same cause." This is consistent with the policy basis of res judicata, which is to assure the finality of judicial decisions. Therefore, the trial court properly held that res judicata applied.

{¶16} Even if there were no genuine issues of material fact, such that the trial court could have clearly concluded that Wietmarschen and Crowe were entitled to judgment as a matter of law, the grant of summary judgment was appropriate. Therefore, we overrule errors eight, nine, and twelve.

{¶17} In Lachman's tenth and eleventh assignments of error, he claims that the trial court erred by adopting the magistrate's recommendations. Lachman claims that the trial court did not consider his objections to the magistrate's report, as evidenced first by the fact that the report violated the judge's order of reference, and second by the lack of a detailed statement supporting the violation. Both of these arguments lack merit. As we have already noted, the magistrate's decision was

clearly supported by law. Therefore, it was not error for the trial court to adopt the magistrate's decision. Also, there is no requirement that the trial court verify the findings made by the magistrate, but it is sufficient that the trial court simply order that the magistrate's decision be adopted. Accordingly, Lachman's tenth and eleventh assignments of error are overruled.

Judgment affirmed.
HILDEBRANDT and WINKLER, J.J., concur.

Please Note:
The court has recorded its own entry on the date of the release of this Decision.
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IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO
D53123197

EDWARD LACHMAN
Appellant,
Vs
BILL WIETMARSCHEN
Appellee,

APPEAL No. c-020208

ENTRY OVERRULING APPLICATION FOR RECONSIDERATION

This cause came on to be considered upon the PRO SE application of the appellant filed herein for reconsideration and upon the response thereto, and
The Court, upon consideration thereof, finds that the application is not well taken and is overruled.

To The Clerk:
Enter upon the Journal of the Court on 1/10/03 per order of the Court.
By:s/_____ (Copies sent to all counsel)
Presiding Judge

Entered
JAN 10 2003
Image 16
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The Supreme Court of Ohio

FILED
APR 23 2003
MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

Edward Lachman
Appellant,
Vs
Bill Wietmarschen and C.
Eric Crowe,
Appellees,

Case No. 03-127

E N T R Y

Upon consideration of the jurisdictional memoranda filed in this case, the Court declines jurisdiction to hear the case and dismisses the appeal as not involving any substantial constitutional question.

COSTS:
Docket Fee, $40,paid by Edward Lachman.

D54530135
Hamilton County Court of Appeals; No. C020208)
s/_____
Thomas J. Moyer
Chief Justice

FILED
2003 MAY -8 A 9:09
GREGORY HARTMANN
CLERK OF COURTS
HAM.CTY.OH

FILED
COURT OF APPEALS
MAY -8 2003
GREGORY HARTMANN
CLERK OF COURTS
HAMILTON COUNTY

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

FILED
KENNETH J. MURPHY
CLERK
01 JAN 25 PM 4:26
U.S. DISTRICT COURT
SOUNTERN DIST OHIO
WEST DIV CINCINNATI

MAX LACHMAN, et al,
Plaintiff(s),
vs.

HAMILTION COUNTY DEPARTMENT
OF ADULT PROBATION, et al,
Defendant(s).

Case Number: C-1-99-347

Judge 4819
Mag.
Journal /
Issue CMTC
Docketed s/_____

ORDER

This matter is before the court pursuant ot the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Timothy S. Hogan. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this court on September 25, 2000 Report and Recommendations (Doc. 29). Subsequently, the plaintiffs filed objections to such Report and Recommendations.

The court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all the filings in this matter. Upon consideration of the foregoing, the court does determine that such Recommendations should be adopted.

IT IS ORDERED that defendants' motion to dismiss plaintiffs' second amended complaint is hereby GRANTED.

IT IS SO ORDERED.

s/_____
Susan J. Dlott
United States District Judge
--

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

FILED
KENNETH J. MURPHY
CLERK
00 SEP 25 PM 12:16
U.S. DISTRICT COURT
SOUNTERN DIST OHIO
WEST DIV CINCINNATI

MAX LACHMAN, et al,
Plaintiffs,
vs.
HAMILTION COUNTY DEPARTMENT
OF ADULT PROBATION, et al,
Defendants.

Civil Action No. C-1-99-347

REPORT AND RECOMMENDATION
(Dlott,J.; Hogan,M.J.)

Judge 4819
Mag. 48BE
Journal /
Issue CMTC
Docketed s/_____

This matter is before the court on defendants' motion to dismiss plaintiffs' second amended complaint (Doc. 19), plaintiffs' memorandum in opposition and supplement thereto (Docs. 26, 27), and defendants' reply memorandum. (Doc. 28).

There have been three complaints filed in this case. The original complaint was filed pro se by plaintiff Max Lachman pursuant to 42 U.S.C. §1983. (Doc. 1).

[...]

In the instant case, plaintiffs' second amended complaint adding plaintiff Edward Lachman is clearly the addition of a new party asserting his own causes of action and is barred by the statute of limitations.

[...]

The addition of Eric Crowe, Bill Weit Marschen, Deborah Lahm, and Unknown Hamilton County Deputy Sheriffs as defendants also adds new parties to the second amended complaint and is barred.

[...]

Plaintiffs have failed to satisfy the requirements for the relation back under Fed. R. Civ. P. 15(c)(3). Therefore, the second amended complaint against defendants does not relate back to the date of the original complaint. Under the applicable two year statute of limitations governing section 1983 claims in Ohio, Browning v. Pendelton, 869 F.2d 989, 992 (6th Cir. 1989), the second amended complaint is therefore time-barred and should be dismissed.

To the extent plaintiffs second amended complaint alleges the actions of defendants violate the state law of Ohio, the Court should decline to exercise pendent jurisdiction over such claims. See United Mine Workers v. Gibbs, 383 U.S. 715 (1966).

IT IS THEREFORE RECOMMENDED THAT:

1. Defendants' motion to dismiss plaintiffs' second amended complaint (Doc. 19) be GRANTED.

Date: September 25, 2000

s/_____

Timothy S. Hogan

United States Magistrate Judge

--

U.S. CONSTITUTIONAL PROVISIONS

The 10th Amendment:
The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the People.

The pertinent part of the 14th Amendment:
nor shall any State...deny to any person within its jurisdiction the equal protection of the laws.

U.S. FEDERAL STATUTES

The pertinent part of 28 U.S.C. §1359 states:
A district court shall not have jurisdiction of a civil action in which any party...has been improperly...joined to invoke the jurisdiction of such court.

The pertinent part of 28 U.S.C. §1257(a) states:
Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question...or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution
--

IN THE MUNICIPAL COURT OF
HAMILTON COUNTY, OHIO

EDWARD LACHMAN
Plaintiff
vs.
BILL WIETMARSCHEN C. ERIC CROWE
Defendant.

CASE NO. 01CV29469
Judge ELIZABETH MATTINGLY

JAMES CISSEL, CLERK
HAM.CTY.MUN. COURT
CIVIL DIVISION
JAN 4 3 03 PM '02

MOTION TO STRIKE

The Plaintiff, pursuant to Local Rule V.3, moves this Court as follows:
[...]
6. Motion to strike entirely Defendants' Motion for Summary Judgement as a sham in bad faith in an attempt to defraud this Court.

On page 3 of the Motion for Summary Judgement, Defendants' counsel states:

> "Subsequently on May 14 1999 Plaintiff Edward Lachman and Max Lachman filed a Complaint and Jury Demand in Federal District Court for the Southern District of Ohio naming Bill Wietmarschen and C. Eric Crowe as defendants. (Exhibit 4, Certified Copy of Plaintiff's Second Amended Complaint)."

(This is also Exhibit 2 in Plaintiff's attached Addendum, which is followed by Exhibit 3 -- a notarised, certified copy of the May 14 1999 federal Complaint.)

Counsel perpetrated a blatant, calculated and deliberate fraud on this Court, by trying to substitute the second amended complaint of 13 March 2000 for the original complaint of 14 May 1999, in which neither of the current Defendants is named, nor is the current Plaintiff named, as a party to the original complaint, nor were any of these names added prior to 14 November 1999, when the statute of limitations expired. As such, the District Court properly dismissed, the attempt by the Second Amended Complaint to include those names, as being barred by the 2-year federal

statute of limitations. Counsel admitted to this on page 7:

> "Lachman's initial Section 1983 case was dismissed by the United States District Court because the claims he asserted against Crowe and Wietmarschen were barred by the statute of limitations."

[...]
--

HAMILTON COUNTY MUNICIPAL COURT
CINCINNATI, OHIO

EDWARD LACHMAN
Plaintiff
vs.
BILL WIETMARSCHEN C. ERIC CROWE
Defendant.

CASE NO. 01CV29469
[...]
AFFIDAVIT OF PLAINTIFF IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
COUNTY OF HAMILTON
STATE OF OHIO

I, Edward Lachman do solemnly affirm on the basis of personal knowledge, belief, and information:
[...]
9. that I did not join any complaint to a federal civil rights action before the expiration of the associated 2-year statute of limitations on 14 Nov. 1999, nor did I name any of the current Defendants before that time, nor did I seek any common law remedies for trespass on my property in any federal venue.
[...]
JAMES CISSELL, CLERK

HAM. CTY. MUN. COURT
CIVIL DIVISION
JAN 7 3 22 PM '02
[...]
14. that all of the statements above are true and correct to the best of my personal knowledge, information and belief.

s/__(Edward Lachman)__
Affirmed and subscribed before me Dale S. Rose Jr. a notary public in and for the above captioned county and state, this 7th day of January, 2002.
Signature of Notary Public: s/_____
(notarial seal)
DALE S. ROSE JR.
Notary Public - State of Ohio
My Commission Expires
November 23, 2004
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IN THE MUNICIPAL COURT OF
HAMILTON COUNTY, OHIO

EDWARD LACHMAN
Plaintiff
vs.
BILL WIETMARSCHEN C. ERIC CROWE
Defendant.

CASE NO. 01CV29469
Judge ELIZABETH MATTINGLY

VERIFIED MOTION TO SET MAGISTRATE'S ORDER ASIDE

The Plaintiff, pursuant to Civil Rule 53C3b, moves this Court to set aside the Magistrate's Order of 8 January 2002 on the grounds that the Magistrate:

1. failed to conduct, as required by Civ.R. 53E1, "all" procedures necessary, such as those listed in Civ.R.

16(2) & (4) for any "simplification of the issues" or any "necessity of amendments to the pleadings," which could remove defects alleged by Defendants to be in Plaintiff's Complaint, and so allow a subset of issues alleged in the Complaint to proceed to trial. Such procedures are especially necessary in this case, as Plaintiff is not a lawyer, and Plaintiff's own lawyer was unable to take on this case due to academic commitments, and the Magistrate was so informed.

2. excluded Plaintiff's evidence that there were material facts in dispute relating to a trespass action (which is not actionable in federal court, nor was there ever such an action) thereby violating Civ.R. 56C.

3. ignored the fact that Defendant's Counsel submitted a Motion for Summary Judgment after the matter had been scheduled for trial on 9 January 2002, so violating Civ.R. 56B, for which violation Plaintiff moved to strike.

4. will be unable to file a report on "all" issues of law and fact thereby violating the terms of the Order of Reference, as a result of the foregoing defects.

Plaintiff certifies that the above is true or accurate to the best of his knowledge and belief.

Respectfully submitted,
s/_____
Edward Lachman, Plaintiff
87 Juergens Ave.
Cincinnati Ohio 45220
513-861-7748

JAMES CISSEL, CLERK
HAM.CTY.MUN. COURT
CIVIL DIVISION
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VERIFIED OBJECTION TO MAGISTRATE'S DECISION, WITH ATTACHED AFFIDAVIT

Pursuant to Civil Rule 52C3, Plaintiff objects to the decision of Magistrate Wolf, which was filed on 8 February 2002 on the following grounds:

1. The Magistrate has erred in interpreting the facts in:

a. stating that "the Complaint in this action has already been litigated in the United States District Court."

The Complaint in this action was not litigated in the United States District Court, as the current trespass Complaint does not make the same pleadings as the federal civil rights' complaint whose lawyer did not plead any issue in district court which could also be litigated as a trespass cause of action in Municipal Court. Moreover, Plaintiff did not commence the original Title 42 Section 1983 complaint filed on 14 May 1999 in district court. Plaintiff's name only appeared on an amended complaint after the statute of limitations had expired on 14 November 1999, as was noted in Magistrate Hogan's decision attached to the Motion for Summary Judgement in this case.

Counsel for the Defendants was guilty of a falsification in the Motion for Summary Judgement by altering the date of an amended federal complaint attached as an Exhibit so as to falsely indicate that Plaintiff was the one to commence the original

complaint in district court on 14 May 1999, rather than Max Lachman by himself as the sole litigant.

The true date of the both the 1st and 2nd amended federal complaints was in each case after the statute of limitations for federal civil rights cases had expired on 14 November 1999, which was the reason given for Magistrate Hogan's decision to bar the Plaintiff from attempting to join along with Max Lachman as a litigant in district court. Said decision is attached to the Motion for Summary Judgement in this case.

In said Motion, it was explicitly stated that Plaintiff did not appeal Magistrate Hogan's decision. Therefore, said decision, which barred Plaintiff from joining Max Lachman as a litigant in a Section 1983 action such that Plaintiff's amended federal complaints were nullified, must be recognised by this Court as a failed attempt to litigate.

[...]

2. The Magistrate has erred in relying on conclusions of law such as:

[...]

b. Plaintiff's current cause of action was identical to the causes of action in U.S. district court

The federal causes of action are not identical to the current trespass cause of action. This is self-evident by comparing the federal amended complaint attached to the Motion for Summary Judgement against the Complaint in this case. Thus, the Magistrate erred for relying on such a conclusion of law.

c. "Edward Lachman is barred from attempting to relitigate his claim in this Court".

Even if the presumptive frauds (of having had standing, permission to join Max Lachman as a litigant, etc.) in Magistrate Wolf's statement were true, Edward Lachman is not barred from attempting to litigate in Municipal Court a prior claim from an abortive attempt, if: the prior claim had been dismissed without prejudice and not in appeal; or the current claim relies on a

mutually exclusive remedy; or the prior claim could not have been heard in the jurisdiction where it had been brought; or the prior claim could not have been heard due to procedural circumstances; or the prior claim was dismissed as a result of an interlocutory judgement; rather than offering the claimant full due process to have his day in court. In all such cases, an attempt to litigate a case is deemed not to be the same as litigation which by definition requires a full and fair hearing on the merits of the claims. (Norwood v. MacDonald, 142 Ohio 299; Goodson v. McDonough, 2 Ohio St. 3d 193.) Any of these conditions holds in the current case: The case in U.S. district court had been dismissed pre-trial by a magistrate without prejudice and so did not reach the merits of the claims and is not in appeal; The current remedy is mutually exclusive to the remedy that had been sought in district court; The current trespass claim in Municipal Court could not have been heard in the jurisdiction of the U.S. district court for southern Ohio; the prior claim could not have been heard due to the procedural circumstance of filing the claim after the federal statute of limitations had expired; the prior claim was dismissed as the result of an interlocutory judgement by a magistrate, instead of a full trial of the merits of the claim in the presence of the Plaintiff in district court before a judge. Thus, the Magistrate erred in issuing this conclusion of law, when she should have held that Edward Lachman may re-attempt to litigate his claim for any of the above-stated reasons, all of which are self-evident from the filings, exhibits and affidavits on the official record for this case up to the day before the hearing.

For the objections shown, Plaintiff objects to the Magistrate's decision and submits that the decision ought to be rejected on the grounds of any one of these objections, and in the interest of substantial justice.

Plaintiff certifies that the above is true or accurate to the best of his knowledge or belief.

Respectfully submitted,
s/_____
Edward Lachman
87 Juergens Ave.
Cincinnati Ohio
14 February 2002

JAMES CISSELL, CLERK
HAM. CTY. MUN. COURT
CIVIL DIVISION
2002 FEB 14 PM 4:00
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OHIO RULES OF CIVIL PROCEDURE

Rule 16. Pretrial Procedure
In any action, the court may schedule one or more conferences before trial to accomplish the following objectives:
[...]
(2) The simplification of the issues;
[...]
(4) The necessity of amendments to the pleadings;
[...]
(10) Other matters as may aid in the disposition of the action.

Rule 53. Referees
[...]
(E) Report
(1) Contents and filing. The referee shall prepare a report upon matters submitted by the order of reference. The referee shall file the report with the clerk of the court and shall mail a copy to the parties.